

Date of decision: March 20, 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of ..  
  
thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Mr.M.R.Bhatt, L.A. for the petitioner

Mr.M.R.Anand, LPP with Mr.A.J.Desai LAGP for the respondents.  
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Coram: N.J.Pandya & A.R.Dave,JJ.  
March 20,1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

We are not entering into the merits of the disputes between the parties. We record the fact that, according to the petitioner, when they commenced production for the first time, the Unit was situated at Shapar and thereafter, they shifted at Matoda, Taluka

Lodhika. For this purpose, the petitioner is relying upon the first Bill dated 9-8-1992 pursuant to which application dated 7-12-1992 came to be filed.

2. However, the stand of the respondent-authority including the State Government is that the fact of shifting was never brought to their notice and they have gone by the contents of the application where plant was shown to be working at Lodhika and so far as the claim made in the petition that there is shifting from Shapar to Lodhika is concerned, the authorities have taken a stand that it falls within the category for ineligible investment. So far as the shifting is concerned, it is clear from the record that the fact of shifting has come to notice of the concerned authorities after it was over.

3. The dispute naturally therefore, centres around the interpretation of what is ineligible investment. For this purpose, the petitioner is relying upon the fact that the machinery which was brought in first time and installed at Shapar was the very machinery which was shifted to Matoda, Taluka Lodhika and to it was added further machinery at Matoda, Taluka Lodhika. The authorities are wrong in not taking into consideration the machinery which was brought at Shapar and shifted to Matoda, Taluka Lodhika.

4. The shifting was only because the Unit at Shapar was in a leasehold premises, while the premises at Matoda, Taluka Lodhika are of the ownership of the petitioner.

5. In spite of the said stand taken by the department that the shifting from Shapar to Lodhika would fall within the category of ineligible investment, the fact that it was done within the zone where the scheme is applicable uniformly is required to be considered by the concerned authorities while interpreting the ineligible investment.

6. In other words, it shall be open for the petitioner to make out their case before the authorities, as set out in the petition itself which is to be treated as representation that it being within the zone it should be treated as eligible investment and physical change of place of machinery should not be taken as shifting within the meaning of definition of ineligible investment.

7. The department shall consider the said case of the petitioner irrespective of the stand taken in the affidavit in reply to the petition filed through Shri

R.P.Patel, General Manager, District Industries Centre for and on behalf of the respondents. It shall be open to the petitioner to supplement the representation made in the petition by documents in addition to what they have produced in the petition.

8. For this personal hearing may be given and the matter shall be decided on or before 31st May 1996. A copy of the petition is already with the other side and therefore, if any additional material is to be produced or new ground is to be added, it shall be so done before the Commissioner of Industries by 15th of April 1996. If the Commissioner of Industries does not have copy of the petition, the concerned authority shall forward the same to the said authority on or before 15-4-1996.

9. Though eligibility certificate commencing from June 1993 has been given in the year 1995, it has not been acted upon by the authority so far. This being not a subject matter here, we do not express any opinion. However, there is a possibility of advancing this date to August 1992 if the representation is accepted. It will have its own consequences so far as acting upon the eligibility certificate is concerned and this would necessarily mean that the payment of subsisting bill will be on the basis of the decision so taken. It is, ofcourse, understood that it will be open to the petitioner to challenge whatever decision taken against him.

10. In view of this development, nothing further is required to be done in the matter. It is disposed of accordingly. Stay to continue for 15 days after the date of the decision by the Commissioner of Industries. Rule is discharged subject to the above direction.

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gmK